REPUBLIC OF NAMIBIA

HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

JUDGMENT

Case no: HC-MD-CIV-ACT-OTH-2020/00364

In the matter between:

HARRY STEPHANUS	**PLAINTIFF**
and	
LIZ LILIANA NDEUMONA KUUTONDOKWA	**FIRST DEFENDANT**
LYNTJIE SKEFFERS	**SECOND DEFENDANT**
THE MASTER OF THE HIGH COURT	**THIRD DEFENDANT**
VAN DER MERWE -GREEF ANDIMA INC.	**FOURTH DEFENDANT**

Neutral citation: *Stephanus v Kuutondokwa* (HC-MD-CIV-ACT-OTH-2020/00364) [2022] NAHCMD 622 (16 November 2022)

Coram: PARKER AJ
Heard: **27 October 2022**
Delivered: **16 November 2022**

Flynote: Practice – Absolution – At end of the plaintiff's case – Court applying trite principles and approaches – Court considering the evidence led by the plaintiff in relation to the pleadings and the requirements of the law applicable to the case – Court finding that on the pleadings the plaintiff seeks declaratory orders – The

applicable law relates to the power of the High Court to grant declaratory orders in terms of s 16 of the High Court Act 16 of 1990.

Summary: Practice – Absolution – At end of plaintiff's case – Evidence led aimed at proving that the testatrix of the will filed of record was incapable of executing a Will due to her medical condition at the relevant time – The plaintiff is deceased adult biological son – Testatrix died a few days after making her will – Court found that the plaintiff has failed to establish that some legal rights and obligations existed between the testatrix and the plaintiff in the making of the will – There could therefore not be an infringement or apprehended infringement of a right or an obligation to a disputed right or obligation in the making of the will – Court found further that the plaintiff failed to establish that he was an interested person within meaning of s 16*(d)* of Act 16 of 1990 – Accordingly, Court found that there was no interested person at whose instance the court ought to enquire into and determine any existing, future or contingent right or obligation – The plaintiff failed to prove a right or obligation which the court could protect by declaration – Consequently, court decided that it would be unlawful and inequitable for the court to grant the declaratory orders prayed by the plaintiff – Court concluded that the plaintiff has not made out a prima facie case, requiring an answer from the defendants – Accordingly, the plaintiff has not made out a prima facie case upon which a court could or might find for the plaintiff – The irrefragable result is that the plaintiff has failed to survive absolution – In the result absolution from the instance is granted with costs.

Held, in the absence of proof of a right referred to in s 16(*d*) of Act 16 of 1990, the court has no jurisdiction to grant a declaratory order.
Held, further, for the plaintiff to survive absolution from the instance at the close of the plaintiff's case, the plaintiff must make out a prima facie case upon which a court could or might find for the plaintiff.

ORDER

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1. The application for absolution from the instance is hereby granted with costs.

2. The matter is considered finalised and is removed from the roll.

JUDGMENT

PARKER AJ:

[1] This is a case where the dead is not being allowed to rest in eternal bliss with her maker. The dispute concerns a will made by a testatrix, Mrs Magdalena Stephanus, who has long died. The determination of the instant matter turns on an extremely short and narrow compass, considering the relief sought: Plaintiff seeks declaratory orders (apart from a costs order). It is otiose to describe here the parties because their description is in the pleadings, except to note that the plaintiff is an adult biological son of the testatrix.

[2] For the record, the following injurious and prejudicial occurrences – injurious to the due administration of justice and prejudicial to the defendants – must perforce be put in capitalities and underlined.

[3] With the settled intention to scupper the expeditious disposal of the matter, the plaintiff did all he could to impede the progress of the trial, much to the non-fulfilment of the overriding objectives laid out so clearly in rules 1 (3) and (4) of the rules of court.

[4] The trial had been postponed on three occasions to suit the whims and caprices of the plaintiff. The Directorate of Legal Aid in the Ministry of Justice on three occasions gave plaintiff legal representation. Plaintiff dismissed the legal practitioners involved on the three occasions. On those occasions the trial had to be postponed for long periods to enable the plaintiff's new legal practitioners to place themselves on record and to have ample time to prepare for the trial. On the penultimate occasion, the trial was postponed to enable the plaintiff to obtain the services of the last legal practitioner, instructed and paid for yet again by the

aforementioned Directorate of Legal Aid, to lead the evidence of the plaintiff's expert witness and last witness.

[5] I postponed the trial on multiple occasions, as aforesaid, in the interest of rule of law and due administration of justice, even though the postponements were plainly highly prejudicial to the defendants, particularly, when all the postponements were not brought formally but from the bar, in breach of rule 96 (3) of the rules of court.[1] As I say, I allowed the informal way in which the applications were brought in the interest of due administration of justice and for the benefit of the plaintiff so that he could get legal representation. But it would seem the applicant was not interested in getting legal representation. He was interested rather in delaying the conclusion of the trial.

[6] As I say, I bent backwards to almost breaking point to assist the plaintiff, albeit I knew that by so doing I was setting at nought the defendants' right guaranteed to them by the same art 12 (1) of the Namibian Constitution, which the plaintiff is so much enamoured with. The plaintiff came to court with the settled mind that he, and he alone, and not the defendants, should be thankful of the basic human right guaranteed to persons by art 12 (1) of the Namibian Constitution. He is palpably mistaken in his view. As I said in *Vaatz v The Municipal Council of the Municipality of Windhoek* –

'[15] It must be remembered that basic human rights without commitment to responsible behaviour are made into purposeless absolutes. But I do not think the Namibian Constitution, with the noble ideals of basic human rights and rule of law embedded in its bosom, says that those basic human rights are absolutes – to be enjoyed by an individual without the individual looking to see if in pursuit of his or her enjoyment of his or her rights he or she is violating other individuals' basic human rights. In the instant case, the applicant did not look to see.'[2]

[7] As I say, the plaintiff forgets that the defendants, too, have the right to the art 12(1) basic human right. The last straw that broke the camel's back was this. On 27

[1] See Petrus T Damaseb *Court-Managed Civil Procedure of the High Court of Namibia: Law, Procedure and Practice* 1ed (2020) at 244-247.
[2] *Vaatz v The Municipal Council of the Municipality of Windhoek* (A 287/2010) [2011] NAHCMD 178 (22 June 2011).

October 2022, the plaintiff's last Legal Aid counsel informed the court that he had filed a notice to withdraw as the plaintiff's counsel because the plaintiff had summarily dismissed him as his counsel. And he was dismissed when he was in the process of preparing the plaintiff's heads of argument respecting the absolution application which was set down to be argued at 10h00 the same day. The defendants' counsel had been prepared to argue their absolution application after the plaintiff's counsel closed the plaintiff's case. I decided that counsel should file written heads of argument.

[8] In that regard this should be signalised: I was prepared to give the plaintiff's counsel more days within which to file his heads of argument. But counsel insisted that he would file his heads in two days' time. This debunks any invidious and mendacious rantings by the plaintiff that the plaintiff was not given ample time to file their heads of argument. That is bunkum.

[9] Yet another judicial largesse I gave to the plaintiff is that I decided to accept the plaintiff's heads of argument which had not been filed of record as ordered by the court. In all this, I should say, counsel of the defendants were all magnanimous in going along with the court-ordered postponements and the last largesse I extended to the plaintiff.

[10] But enough is enough, to use a pedestrian language. I was not prepared to bend backwards to breaking point to satisfy the destructive and prejudicial whims and caprices of the plaintiff. The hearing of the absolution application had to go ahead as set down; and it went ahead. The court has the inherent power to stop a trial from abuse of process which has had the consequence of eroding any prospect that the trial can be fair to all parties on both sides of the suit. In that regard, a postponement of a matter or an adjournment of proceedings ought to be allowed only if in the court's view it is expedient in the interest of justice. It would not be in the interest of justice to all parties, if, as is the situation in the present proceeding, the matter has been postponed on diverse occasions at the behest of the plaintiff, who without proven good cause, dismissed three counsel on three occasions, and all at

the expense of the defendants. Such dilatoriness that is detrimental to due administration of justice cannot be tolerated or encouraged.[3]

[11] So it was that the plaintiff's last Legal Aid counsel closed the plaintiff's case on 24 October 2022. At the close of the plaintiff's case, the defendants brought an application for absolution from the instance. The plaintiff's case consisted of the evidence of the plaintiff and Dr Shuuya, an expert witness. The plaintiff *in persona*, represented the plaintiff during the hearing of the absolution application, after he had dismissed Mr Esau, as explained above. Ms Gaes represents the first defendant; and Mr Shimakeleni represents the second defendant. There is no appearance for the third and fourth respondents.

[12] In the latest absolution application I dealt with,[4] I rehearsed the principles and approaches regarding such application in the earlier case of *Swartbooi v Pietersen and Another* where the authorities are gathered:

'[4] When a similar application was brought in *Neis v Kasuma* HC-MD-CIV-ACT-CON-2017/000939 [2020] NAHCMD 320 (30 July 2020), I stated thus:

"[6] The test for absolution from the instance has been settled by the authorities. The principles and approaches have been followed in a number of cases. They were approved by the Supreme Court in *Stier and Another v Henke* 2012 (1) NR 370 (SC). There, the Supreme Court stated:

"[4] At 92F-G, Harms JA in *Gordon Lloyd Page & Associates v Rivera and Another* 2001 (1) SA 88 (SCA) referred to the formulation of the test to be applied by a trial court when absolution is applied at the end of an appellant's (a plaintiff's) case as appears in *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) SA 403 (A) at 409 G-H:

> ". . . when absolution from the instance is sought at the close of plaintiff's case, the test to be applied is not whether the evidence led by the plaintiff establishes what would finally be required to be established, but whether there is evidence upon which a Court, applying its mind reasonably to such evidence,

[3] See *Namibia Development Corporation v Aussenkehr Farms (Pty) Ltd* 2010 (2) 703.
[4] *Muthoga v Medical and Dental Council of Namibia* [2021] NAHCMD 534 (18 November 2021).

could or might (not should, or ought to) find for the plaintiff. (*Gascoyne v Paul and Hunter* 1917 TPD 170 at 173; *Ruto Flour Mills (Pty) Ltd v Adelson* (2) 1958 (4) SA 307 (T).)"

"Harms JA went on to explain at 92H - 93A:

"This implies that a plaintiff has to make out a prima facie case — in the sense that there is evidence relating to all the elements of the claim — to survive absolution because without such evidence no court could find for the plaintiff (*Marine & Trade Insurance Co Ltd v Van der Schyff* 1972 (1) SA 26 (A) at 37G-38A; *Schmidt Bewysreg* 4 ed at 91-2). As far as inferences from the evidence are concerned, the inference relied upon by the plaintiff must be a reasonable one, not the only reasonable one (Schmidt at 93). The test has from time to time been formulated in different terms, especially it has been said that the court must consider whether there is ''evidence upon which a reasonable man might find for the plaintiff'' (Gascoyne (loc cit)) — a test which had its origin in jury trials when the ''reasonable man'' was a reasonable member of the jury (*Ruto Flour Mills*). Such a formulation tends to cloud the issue. The court ought not to be concerned with what someone else might think; it should rather be concerned with its own judgment and not that of another ''reasonable'' person or court. Having said this, absolution at the end of a plaintiff's case, in the ordinary course of events, will nevertheless be granted sparingly but when the occasion arises, a court should order it in the interest of justice. . . ."

[7] Thus, in *Dannecker v Leopard Tours Car & Camping Hire CC* (I 2909/2006) [2015] NAHCMD 30 (20 February 2015), Damaseb JP stated as follows on the test of absolution from the instance at the close of plaintiff's case:

"<u>The test for absolution at the end of plaintiff's case</u>

[25] The relevant test is not whether the evidence led by the plaintiff established what would finally be required to be established, but whether there is evidence upon which a court, applying its mind reasonably to such evidence, could or might (not should or ought to) find for the plaintiff. The reasoning at this stage is to be distinguished from the reasoning which the court applies at the end of the trial; which is: 'is there evidence upon which a Court ought to give judgment in favour of the plaintiff?'

[26] The following considerations (which I shall call 'the Damaseb considerations') are in my view relevant and find application in the case before me:

> (a) Absolution at the end of plaintiff's case ought only to be granted in a very clear case where the plaintiff has not made out any case at all, in fact and law;
> (a) The plaintiff is not to be lightly shut out where the defence relied on by the defendant is peculiarly within the latter's knowledge while the plaintiff had made out a case calling for an answer (or rebuttal) on oath;
> (b) The trier of fact should be on the guard for a defendant who attempts to invoke the absolution procedure to avoid coming into the witness box to answer uncomfortable facts having a bearing on both credibility and the weight of probabilities in the case;
> (c) Where the plaintiff's evidence gives rise to more than one plausible inference, anyone of which is in his or her favour in the sense of supporting his or cause of action and destructive of the version of the defence, absolution is an inappropriate remedy;
> (d) Perhaps most importantly, in adjudicating an application of absolution at the end of plaintiff's case, the trier of fact is bound to accept as true the evidence led by and on behalf of the plaintiff, unless the plaintiff's evidence is incurably and inherently so improbable and unsatisfactory as to be rejected out of hand".'

[5] Another important principle that the court determining an absolution application should consider is this. The clause 'applying its mind reasonably', used by Harms JA in *Neon Lights (SA) Ltd* 'requires the court not to consider the evidence *in vacuo* but to consider the evidence in relation to the pleadings and in relation to the requirements of the law applicable to the particular case. (*Bidoli v Ellistron t/a Ellistron Truck & Plaint* 2002 NR 451 at 453G)'

[13] The court in *Bidoli* stated that the clause 'applying its mind reasonably', used by Harms JA in *Claude Neon Lights (SA) Ltd v Daniel*[5] 'requires the court not to consider the evidence *in vacuo* but to consider the evidence in relation to the pleadings and in relation to the requirements of the law applicable to the particular case'.

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[5] *Claude Neon Lights (SA) Ltd v Daniel* 1976 (4) Sa 403 (A) at 409 G-H.

[14] Consequently, in considering the present absolution application, it behoves me to consider the evidence in relation to the pleadings and in relation to the requirements of the law applicable to the particular case as propounded by the authorities. In his pleadings, the plaintiff has approached the court for declaratory orders.

[15] As to declaratory orders and the power of the court to grant them, I cannot do any better than to rehash the examination of the law and the requirements that was undertaken in *Alexander v Minister of Home Affairs and Others* and the conclusions thereanent:

'[8] The power of this Court to grant declaratory orders flow from s 16 of the High Court Act, 1990 (Act No. 16 of 1990) which provides that -

> "(d) (the High Court) in its *discretion*, and at the instance of any interested person, to enquire into and determine any *existing*, *future* or *contingent* right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination".
> [My emphasis]

[9] Interpreting and applying a similar provision, which contains identical words as the Namibian provision quoted above, in s 19 (1) (a) of South Africa's Supreme Court Act, 1959 (Act No. 59 of 1959) in *Government of the Self-Governing Territory of Kwazulu v Mahlangu* 1994 (1) SA 626 (T), Eloff, JP stated at 634B, "The important element in this section is that the power of the Court is limited to a question concerning a right. The nature and scope of the right might be inquired into, but in the absence of proof of such a right, or at least *a contention that there is such a right*, the Court has no jurisdiction." (Emphasis added) The 'flip side' of this view, which I respectfully accept, is that the Court has jurisdiction if there is proof of a right or at least *a contention that there is such a right*.

[10] Mr. Smuts submitted that in the Part B application, the applicant seeks to impugn the 3rd respondent's decision, and he seeks protection of his right on an urgent basis in the interim via the Part A application, pending the outcome of the Part B application. Ms Katjipuka-Sibolile's crisp response is that "this Court has no right to protect a non-existent right." I agree; that is a matter of course – in logic and in law; but it is only so if the right is, indeed, non-existent. It follows that the foremost relevant question, among other relevant

questions, that appears to arise for decision in the present application is whether the applicant has shown on a preponderance of probabilities that he has a right that this Court should protect in the interim. And in deciding the question I think I should draw support from the apropos words of Eloff, JP in *Mahlangu* supra, namely that the nature and scope of the right might be inquired into, and the Court has jurisdiction if there is proof of such right "or at least a contention that there is a right." I think I should also rely on the following passage by Van Dijkhorst, J in *Family Benefit Friendly Society v Commissioner for Inland Revenue* in 1995 (4) SA 120 (T) at 124E:

> "The question whether or not relief should be granted under this section has to be examined in two stages. Firstly, the jurisdictional facts have to be established. When this has been done the Court must decide whether the case is a proper one for the exercise of its discretion."

[11] Van Dijkhorst proposed at 124F-125D the principles applicable when declaratory relief is sought. In brief, the principles are: (1) The applicant must be "an interested person" in the right (or obligation) inquired into. (2) There must be a right (or obligation) which becomes the object of the enquiry; and the right may be existing, future or contingent, that is contingent in the narrow sense of "conditional"; that is, in contradistinction to "vested". Thus, the right (or obligation) to be enquired into is "either vested (present and future) or conditional (contingent). (3) The requirement of an existing and concrete dispute between the parties as modified in *Ex parte Nell* 1963 (1) SA 754 (A) at 759H-760A. (4) The rule that a party is not entitled to approach the Court for what amounts to a legal opinion on an abstract or academic matter. (5) The Court will not make a declaration of rights unless there are interested persons on whom the declaration would be binding. Lastly, (6) when a Court has to determine whether it should exercise its discretion in favour of a declaratory order considerations of public policy come into play.

[12] I find myself in respectful agreement with Van Dijkhorst, J as respects the principles, as well as with his proposition that items (1) and (2) deal with jurisdictional facts *ibid.* at 124F). That being the case, upon the authority of *Family Benefit Friendly Society* supra, I must determine firstly if the jurisdictional facts have been established and if they have, go on to decide whether the case is a proper one for the exercise of my discretion in favour of the relief sought.'[6]

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[6] *Alexander v Minister of Home Affairs and Others* Case No A 155/2009.

[16] I now proceed to consider the instant declaration application in the light of the interpretation and application of s 16*(d)* of Act No. 16 of 1990 and the principles developed thereanent as set out previously. Thus, in the instant matter, I should determine whether the jurisdictional facts have been established. If they have been established, then I should go on to decide whether the case is a proper one for the exercise of the court's discretion to grant a declaratory order.[7] The next level of the enquiry is, therefore, to determine if on the evidence, plaintiff has established the necessary jurisdictional facts discussed previously.

[17] I reiterate the jurisdictional facts discussed previously:

(1) whether the party seeking a declaratory order is an 'interested person', within the meaning of s 16*(d)* of the High Court Act; and

(2) whether there is a right or an obligation in favour of plaintiff, which is the object of the enquiry, as demonstrated in paras 19-20 below.

[18] Thus, unless the court finds that the jurisdictional facts have been established in terms of the first Van Dijkhorst stage, the court is not entitled to proceed to the second Van Dijkhorst stage discussed in para 15 above. In that event, that will be the end of the matter.

[19] It has been held that a party applying for a declaratory order qualifies as an 'interested person', within the meaning of s 16*(d)* of the High Court Act, if he or she has a direct and substantial interest in the subject matter of the suit.[8] The subject matter of the present suit is undoubtedly the making of the will. The making of the will is, therefore, the object of the present enquiry. In that regard, it is crucial to underline the fact that the plaintiff has not approached the court to challenge the contents of the will and, therefore, the distribution of the estate of the testatrix under the will.

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[7] See *Family Benefit Friendly Society* loc. cit.
[8] *Milani & Another v SA Medicals & Dental Council & Another* 1990 (1) SA 899 (T) at 902H.

[20] Having a direct and substantial interest in the subject matter of the suit means the party must establish a legal interest, which requires him or her to have a legally enforceable right or obligation.[9] He or she should have an interest in the right or obligation being enquired into, that is, the right or obligation which is the object of the enquiry concerned. And I have said *ad nauseam* that in the instant matter, the object of the enquiry is the making of the will.

[21] A declaration may be sought in terms of s 16*(d)* of the High Court Act in respect of any infringement or apprehended infringement of a right or an obligation or in relation to a disputed right or obligation.[10] In the instant matter, the making of the will could not involve any of the parties, plaintiff and defendants alike. They did not make the will. And it was not their will.

[22] Not one iota of evidence has been placed before the court sufficient to establish the plaintiff's right to the making of the will or the testatrix's obligation to plaintiff in the making of her will. In that regard, it should be signalised again – and this is crucial – that the plaintiff has not come to court to challenge the contents of the will and, therefore, the distribution of the estate of the testatrix in terms of the will. Plaintiff has come to court to challenge the making of the will by the testatrix, which is the object of the present enquiry,[11] and seeks a declaratory order regarding the making of the will, a matter which did not, as a matter of law, concern him or the other parties.

[23] No allegation has been made in the particulars of claim, nor has it been proved, that plaintiff had the right to be consulted by the testatrix before she could make her own will; or that the testatrix bore an obligation towards plaintiff to consult plaintiff before she could make her own will. Indeed, in his answer to a question for clarification from the Bench, the plaintiff admitted clearly and unambiguously that the testatrix was entitled to make her will without consulting him or getting his consent thereto. Consequently, I conclude that the plaintiff has not established that some legal rights and obligations existed between the testatrix and plaintiff in the making of the will. There could not, therefore, be an infringement or apprehended infringement

[9] See *Helgesen v SA Medical & Dental Council* 1962 (1) SA 800 (N) at 812 – 813.
[10] *Helgesen* loc. cit.
[11] See *Helgesen* loc. cit.

of a right or an obligation or in relation to a disputed right or obligation in the making of the will.

[24] The conclusion is, therefore, inescapable that the plaintiff has not established the requisite jurisdictional facts: The plaintiff has failed to establish that he is an 'interested person', within the meaning of s 16*(d)* of the High Court Act. He has failed also to establish a right or obligation, within the meaning of s 16*(d)* of the High Court Act. In sum, plaintiff has failed to traverse the first of the Van Dijkhorst stages discussed previously.

[25] Consequently, I conclude that there is no 'interested person' at whose instance the court ought to enquire into and determine any existing, future or contingent right or obligation. The plaintiff has failed to prove any such right or such obligation for the court to protect. Indeed, as was held in *Jacob Alexander v Minister of Home Affairs and Others*[12], upon authority, 'in the absence of proof of such a right (or obligation), or at least a contention that there is such a right (or obligation), the court has no jurisdiction'.[13] As I say, plaintiff has not proved such a right or such an obligation; neither did he allege in his particulars of claim the contention that there is such a right or obligation. The result is that the court has no jurisdiction.

[26] It is trite that a declaration is a discretionary order that ought to be granted with care, caution and judicially, having regard to all the circumstances of the case at hand. It will not be granted, for instance, where the relief claimed would be unlawful or inequitable for the court to grant.[14] On the facts and in the circumstances of the case and considering the power of the court in granting declaratory orders in terms of s 16*(d)* of the High Court Act, as I have discussed it previously, I conclude that it will be unlawful and inequitable for the court to grant the relief sought.

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[12] See para15 above.

[13] *Government of the Self-Governing Territory of KwaZulu v Mahlangu* 1994 (1) SA 626 (T) at 634B, where the court was interpreting a similar provision as s 16(d) in s 19(1)(a) of South Africa's Supreme Court Act 59 of 1959.

[14] See Halsbury *Laws of England* 3 ed vol 22 para 1611 at 749-750; applied in *Amupanda and Others v Swapo Party of Namibia and Others* [2016] NAHCMD 126 (A 215/2015; 22 April 2016) para 59); approved in *Kennedy and Another v Minister of Safety and Security and Others* 2020 (3) NR 731 para 19.

[27] It follows that in my judgement, the plaintiff has not made out a prima facie case, requiring answer from the defendants.[15] I am aware of the judicial counsel that a court ought to be cautiously reluctant to grant an order of absolution from the instance at the close of plaintiff's case, unless the occasion has arisen, but, if the occasion has arisen, the court should grant absolution in the interest of justice.[16]

[28] From the foregoing, I hold that plaintiff has not surmounted the bar set by the Supreme Court in *Stier and Another v Henke*[17] which is that for the plaintiff to survive absolution, plaintiff must make out a prima facie case upon which a court could or might find for the plaintiff.

[29] Based on these reasons, I conclude that the occasion has surely arisen for the court to grant absolution from the instance in the interest of justice. In the result, I order as follows:

1. The application for absolution from the instance is hereby granted with costs.

2. The matter is considered finalised and is removed from the roll.

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C PARKER

Acting Judge

[15] *Stier and Another v Henke* 2012 (1) NR 370 (SC).
[16] *Etienne Erasmus v Gary Erhard Wiechmann and Fuel Injection Repairs & Spares CC* [2013] NAHCMD 214 (24 July 2013).
[17] *Stier and Another v Henke;* see footnote 14.

APPEARANCES

PLAINTIFF:	D ESAU, and M SIYOMUNJI Instructed by the Legal Aid Directorate, Ministry of Justice, Windhoek,
FIRST DEFENDANT:	F GAES Of Uanivi Gaes Inc., Windhoek
SECOND DEFENDANT:	A SHIMAKELENI Of Appolos Shimakeleni Lawyers, Windhoek